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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179798
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Opposed Mark: MEDQUEST
U.S. Trademark App. Ser. No. 76/661,551

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Medquest Global Marketing Research, Inc.)	Opposition No.: 91179798
)	
Opposer,)	NOTICE OF OPPOSER'S MOTION
)	FOR SUMMARY JUDGMENT
v.)	SUSTAINING THE OPPOSITION AND
)	REFUSING REGISTRATION OF
Medquest Research, LLC)	APPLICANT'S MEDQUEST MARK
)	
Applicant.)	
)	

PLEASE TAKE NOTICE that Opposer Medquest Global Marketing Research, Inc. (hereinafter "**Opposer**") hereby moves for an order, pursuant to Fed. R. Civ. P. 56 and 37 C.F.R. § 2.116(a) for the Trademark Rules of Practice, for summary judgment on its opposition to Application 76/661,551 ("**the '551 Application**") on the ground that the mark MEDQUEST of the '551 Application filed by Applicant Medquest Research, LLC ("**Applicant**") is likely to cause confusion, mistake, and/or falsely suggest to the public that there is an association between

Opposer and Applicant because Applicant's mark is confusingly similar to Opposer's trade name and service marks and used in connection with services identical to those offered by Opposer.

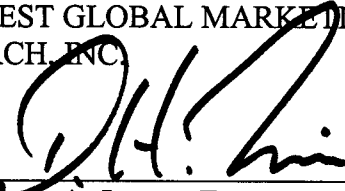
By way of its motion, Opposer will establish that no substantial issues of material fact exist concerning whether: (i) Applicant's mark is confusingly similar to Opposer's trade name and service marks; (ii) Applicant's services are virtually identical to Opposer's services; (iii) Opposer has superior rights to its trade name and service marks vis-à-vis Applicant; and (iv) Opposer has been and will continue to be damaged by Applicant's mark.

Accordingly, Opposer submits this Motion for Summary Judgment together with a Memorandum of Law, the Declarations of Midori Krueger, the Declaration of Don H. Min and exhibits annexed thereto, in support of its motion for summary judgment.

DATED this 1ST day of July, 2008.

MEDQUEST GLOBAL MARKETING
RESEARCH, INC.

By: _____


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PROOF OF SERVICE

I am over the age of eighteen years and not a party to the instant action. My business address is 6100 Center Drive, Suite 630, Los Angeles, California 90045.

On July 7, 2008, I served the following document described as **NOTICE OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT SUSTAINING THE OPPOSITION AND REFUSING REGISTRATION OF APPLICANT'S MEDQUEST MARK** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelope(s) and/or package(s) addressed as follows:

Attorneys for Applicant:


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- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
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I declare that I am employed in the office of a member of the bar of this Court at whose direction such service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2008, at Los Angeles, California.



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Opposed Mark: MEDQUEST
U.S. Trademark App. Ser. No. 76/661,551

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Medquest Global Marketing Research, Inc.)	Opposition No.: 91179798
)	
Opposer,)	OPPOSER'S MOTION FOR SUMMARY
)	JUDGMENT SUSTAINING THE
v.)	OPPOSITION AND REFUSING
)	REGISTRATION OF APPLICANT'S
Medquest Research, LLC)	MEDQUEST MARK
)	
Applicant.)	
)	

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INTRODUCTION

Opposer Medquest Global Marketing Research, Inc. (“**Opposer**”) respectfully submits its Motion for Summary Judgment Sustaining the Opposition and Refusing Registration of Applicant Medquest Research, LLC’s (“**Applicant**”) Application Serial No. 76/661,551 (“**the ‘551 Application**”) on the ground that Applicant’s mark MEDQUEST is likely to cause confusion, mistake, and/or falsely suggest to the public that there is an association between Opposer and Applicant because: (1) Applicant’s mark is confusingly similar to Opposer’s trade name and service marks; (2) Opposer’s use of its service marks and trade name is senior to Applicant’s; and (3) Applicant’s mark is used in connection with services identical to those offered by Opposer. Opposer submits this memorandum of law together with the Declarations of Midori Krueger and Don H. Min in support of this motion for summary judgment.

Opposer will establish hereinbelow that no substantial issues of material fact exist concerning whether: (i) Applicant’s service mark is confusingly similar to Opposer’s trade name and service marks (this stands admitted); (ii) Applicant’s services are virtually identical to Opposer’s services (this stands admitted); (iii) Opposer has superior rights to its trade name and service marks vis-à-vis Applicant; and (iv) Opposer has been and will continue to be damaged by Applicant’s mark.

Therefore, in view of these incontrovertible facts, Opposer is entitled to summary judgment on the issues of priority and “likelihood of confusion” as a matter of law. For these reasons, Opposer respectfully requests that its Motion be granted, the Opposition sustained and registration refused on the ‘551 Application for the mark MEDQUEST.

FACTS

A. Opposer

Opposer first began using its trade name, Medquest Global Marketing Research, Inc., and service marks MEDQUEST GLOBAL and MEDQUEST in connection with its services (collectively hereinafter “**Opposer’s MEDQUEST marks**”) in connection with market research services in the field of health care and pharmaceuticals in July 2003. (Krueger Decl.¹, ¶ 3; Second Krueger Decl.², ¶ 4.) Since July 2003, Opposer has continuously utilized its trade name Medquest Global Marketing Research, Inc. and Opposer’s MEDQUEST marks. (Krueger Decl., ¶ 4; Second Krueger Decl., ¶ 4.) Indeed, on or about July 2003, Opposer filed its Articles of Incorporation under the name Medquest Global Marketing Research, Inc. which was endorsed by the Secretary of State of California on August 4, 2003. (Krueger Decl., ¶ 8, Exhibit 1.)

Since August 2003, Opposer has invested tens of thousands of dollars marketing, promoting and providing services in connection with Opposer’s MEDQUEST marks. (Krueger Decl., ¶ 9.) Opposer markets its services in connection with Opposer’s MEDQUEST marks via contact with prospective clients by telephone, email, US mail or in person, brochures, the Internet via its website at www.medquestglobal.com, membership in industry organizations and attendance at industry meetings. (Krueger Decl., ¶ 10; Second Krueger Decl., ¶ 4, Exhibit 3.) Accordingly, Opposer has substantial and exclusive good will and enjoys a good reputation in connection with its trade name and the services connected with Opposer’s MEDQUEST marks.

In March 2007, Opposer received a cease and desist letter from Applicant’s counsel alleging that Opposer was “essentially providing the same services as [Applicant], using the same name and service mark” and demanding Opposer to stop using its mark stating that

¹ “**Krueger Decl.**” refers to the Declaration of Midori Krueger, in Support of Opposer’s Motion for Summary Judgment submitted concurrently herewith.

² “**Second Krueger Decl.**” refers to the Second Declaration of Midori Kreuger filed concurrently under seal pursuant to the Stipulated Protective Order governing the handling of confidential documents in this opposition.

Opposer's "use of the term 'MedQuest' ... is bound to cause confusion with [Applicant's] business." (Krueger Decl., ¶ 12, Exhibit 2.)

As further detailed below and admitted by Applicant, there is not only a likelihood of confusion that purchasers of Opposer's or Applicant's services will be confused as to the source of their respective services, but Applicant has provided instances of actual confusion by persons encountering both Applicant and Opposer as a result of the mark-at-issue. (Min Decl.³, ¶ 6, see Resp. to Rog No. 10.⁴) Having invested significant resources in building the good will associated with its trade name and Opposer's MEDQUEST marks, believing its business would be damaged by the registration of Applicant's proposed MEDQUEST mark (hereinafter "**Applicant's MEDQUEST mark**") and after Applicant refused Opposer's request to stop using the mark and withdraw its application, Opposer filed this Opposition on October 1, 2007. (Krueger Decl., ¶ 13.)

B. Applicant

Applicant applied for the '551 Application on June 8, 2006 for "market research services in the field of health care and pharmaceuticals" in International Class 035, the same services offered by Opposer in connection with its marks. (Min Decl., ¶ 4, Exhibit 1 and Krueger Decl., ¶ 3.) The '551 Application claims a date of first use of its mark anywhere and in commerce of February 2004. (Min Decl., ¶ 4.) Indeed, Applicant admits it was organized in the Commonwealth of Massachusetts on February 3, 2004. (Min Decl., ¶ 5, see Resp. to RFA No. 5.

³ "**Min Decl.**" refers to the Declaration of Don H. Min in Support of Opposer's Motion for Summary Judgment submitted concurrently herewith.

⁴ "**Resp. to Rog No. __**" refers to Applicant's response to Opposer's Interrogatories, Set One, relevant excerpts of which are attached to the Min Decl. as Exhibit 3.

5)

But, in response to Opposer's interrogatory, Applicant purports (without further support) that Applicant's MEDQUEST mark "has been in continuous use since its inception in December, 2003." (Min Decl., ¶ 6, see, Resp. to Rog. No. 2.) Regardless of which date Applicant seeks to claim as its date of first use (February 2004 as stated in the '551 Application or December 2003 as stated in its discovery response) both dates are subsequent to Opposer's date of first use -- July 2003.

C. Opposition History

Opposer filed this Opposition on October 1, 2007, Applicant filed an Answer on November 8, 2007 and discovery ensued. To date, each party has served and responded to written discovery. On or about April 11, 2008, the parties agreed to extend all trial dates by ninety (90) days and filed a consent motion regarding the same. On or about May 21, 2008, the Board granted an order to extend all trial dates by ninety (90) days.

ARGUMENT

A. Summary Judgment Standard

Summary judgment is encouraged in contested proceedings before the Board, and should be granted where there exists no genuine issue of material fact and the movant is entitled to judgment as a matter of law. See, *Sweats Fashion, Inc. v. Panill Knitting Co., Inc.*, 833 F.2d 1560, 1562, 4 USPQ2d 1793 (Fed. Cir. 1987); Fed. R. Civ. P. 56(c); and 37 C.F.R. § 2.116(a).

⁵ "Resp. to RFA No. ___" refers to Applicant's response to Opposer's Request for Admissions, Set One, relevant excerpts of which are attached to the Min Decl. as Exhibit 2.

An issue is material when its resolution would affect the outcome of the proceeding under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is genuinely in dispute if the evidence of record is such that a reasonable fact finder could return a verdict in favor of the nonmoving party. See, *Lloyd's Food Products, Inc. v. Eli's Inc.*, 25 USPQ2d 2027 (Fed. Cir. 1993). However, a dispute over a fact which would not alter the Board's decision on the legal issue will not prevent entry of summary judgment. See generally, *Kellogg Co. v. Pack'em Enterprises, Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 21 USPQ2d 1142 (Fed. Cir. 1991). The burden on the moving party may be discharged by showing that there is an absence of evidence to support the nonmoving party's case. See, *Sweats Fashion, Inc. v. Panill Knitting Co., Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). Moreover, under Fed. R. Civ. P. 56(c), a motion for summary judgment may be decided based on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any."

B. Standing

Any person who believes they are or will be damaged by registration of a mark, can show a "real interest" in the proceeding, and has a "reasonable basis for its belief of damage" has standing to file an opposition. *Ritchie v. Simpson*, 170 F.3d 1092, 1095 (Fed. Cir. 1999); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1028 (CCPA 1982); see also Lanham Act Sections 13 and 14, 15 U.S.C. §§1063 and 1064, and TBMP §303(b).

In most settings, a direct commercial interest satisfies the "real interest" test. See, *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1161 (Fed. Cir. 2002) citing *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000).

Opposer believes it is, and will continue to be, damaged by registration of the '551

Application. Opposer has a real interest in the proceeding, as use of Applicant's MEDQUEST mark is already causing confusion in the marketplace with Opposer. (Min Decl., ¶ 6, see Resp. to Rog No. 10.) If this confusion continues, Opposer will continue to suffer damage to its reputation and good will as well as be damaged economically; therefore, Opposer has a direct commercial interest in the proceeding.

Opposer has a reasonable basis for its belief of damage – not only are Opposer's MEDQUEST marks and Applicant's MEDQUEST mark virtually identical and used for the identical services, but there have already been instances of actual confusion between Applicant and Opposer since Applicant's claimed date of first use in commerce in the '551 Application. (Min Decl., ¶ 6, see Resp. to Rog No. 10.)

Accordingly, there can be no genuine issue as to any material fact regarding standing: Opposer has a real interest in the proceeding and has a reasonable basis for its belief of damage

C. The Opposition Should Be Sustained And Registration Refused

Section 2(d) of the Lanham Act precludes the registration of a mark that so resembles a mark registered with the USPTO “or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive[.]” 15 U.S.C. § 1052(d).

“In an opposition founded on section 2(d), the opposer must establish its own prior proprietary rights in the same or a confusingly similar designation in order to defeat the application.” *T.A.B. System v. PacTel Teletrac*, 77 F.3d 1372, 1374 (Fed. Cir. 1996) citing generally, 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 20.04 (3d ed. 1994).

Therefore, in order to sustain the instant Opposition under the summary judgment standard, there must be no genuine issue of material fact as to the priority of use by Opposer of its trade name and Opposer's MEDQUEST marks vis-à-vis Applicant's MEDQUEST mark and the confusing similarity between them.

It is difficult to imagine a case where priority of use and likelihood of confusion are so obvious than in the instant case. Applicant adopted a mark virtually identical to Opposer's MEDQUEST marks and trade name after Opposer's use, uses its mark in connection with the same services connected with Opposer's MEDQUEST marks and trade name and offers its services for sale to the same consumers in the same trade channels.

As set forth in detail below, Opposer will show that there is no genuine issue of material fact as to Opposer's superior rights to the mark MEDQUEST vis-à-vis Applicant and the strong likelihood of confusion between Opposer's MEDQUEST marks with Applicant's MEDQUEST mark. For these reasons, Opposer respectfully requests the Board sustain the Opposition and refuse registration of the '551 Application.

1. Opposer's Priority to its Service Mark and Trade Name

To establish priority, one must show proprietary rights in the mark that produces a likelihood of confusion. *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1162 (Fed. Cir. 2002) citing, *Otto Roth & Co. v. Universal Foods Corp.*, 640 F.2d 1317, 1320 (CCPA 1981). These proprietary rights may arise from "a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights." *Id.*

Opposer's proprietary rights arise from its first and continuous use of Opposer's

MEDQUEST marks and its trade name, Medquest Global Marketing Research, Inc., in interstate commerce, in connection with market research services in the field of health care and pharmaceuticals, since July 2003. (Krueger Decl., ¶ 3-8; Second Krueger Decl., ¶4, Exhibits 3-10.)

In contrast, the ‘551 Application claims a date of first use of its mark anywhere, and in commerce, in connection with market research services in the field of health care and pharmaceuticals, of February 2004. (Min Decl., ¶ 4, Exhibit 1.) If an applicant subsequently attempts to prove a date of first use prior to that claimed in its application, it bears a heavy burden of persuasion, and such proof must be “clear and convincing.” See, 3 McCarthy, J. Thomas, *McCarthy on Trademarks and Unfair Competition* §19:52 (3d ed. Rel.39 2006) (emphasis added).

In light of Applicant’s substantial burden to prove a date of first use prior to that claimed in the ‘551 Application, Applicant denies that its date of first use and date of first use in commerce as claimed in the ‘551 Application are correct. (Min Decl., ¶ 5, see Resp. to RFA Nos. 3 and 4.) Moreover, in its verified interrogatory responses, Applicant states that Applicant’s MEDQUEST mark “has been in continuous use since its inception in December, 2003.”⁶ (Min Decl., ¶ 6, see Resp. to Rog No. 2.) Applicant further states in its verified interrogatory responses that the mark was developed via “brainstorming sessions” and “[r]eviews with colleagues and clients” which began “in November 2003” – **four months** after Opposer was already using the mark in commerce. (Min Decl., ¶ 6, see Resp. to Rog No. 7.) Nevertheless, Applicant has not provided any further information or documents to support a date of first use prior to that claimed in the ‘551 Application. Indeed, Applicant admits it was

⁶ Applicant has not provided any documents or other information in support of its response to Opposer’s Interrogatory Nos. 2 and 7 to Applicant.

organized in the Commonwealth of Massachusetts on February 3, 2004. (Min Decl., ¶ 5, see Resp. to RFA No. 5.)

Regardless of which date Applicant wishes to claim as its date of first use, whether February 2004 as stated in the '551 Application or November/December 2003 as stated in its interrogatory responses, said dates are subsequent to Opposer's date of first use of July 2003. (Krueger Decl., ¶ 3; Second Krueger Decl., ¶ 4.)

Opposer has proprietary rights to Opposer's MEDQUEST marks arising from its prior and continuous use of its trade name and its service marks, vis-à-vis Applicant, in interstate commerce. Since there is no genuine issue of material fact as to the priority of use by Opposer, Opposer respectfully requests the Board find in its favor on the issue of priority.

2. Likelihood of Confusion

The likelihood of confusion which exists between the marks-in-dispute has been admitted in this case by Applicant so there is no genuine issue of material facts as to whether a likelihood of confusion exists between Applicant's MEDQUEST mark and Opposer's MEDQUEST marks and trade name.

Applicant admits that use of Applicant's MEDQUEST mark and Opposer's MEDQUEST marks for use in connection with market research services in the field of health care and pharmaceuticals is likely to cause confusion among purchasers of these services. (Min Decl., ¶ 5, see Resp. to RFA No. 34.) In addition, on or about March 15, 2007, Applicant sent a cease and desist letter to Opposer wherein Applicant specifically admits Opposer's "use of the term 'MedQuest' for the services [Opposer] provide is bound to cause confusion with [Applicant's] business." (Krueger Decl., ¶ 12, Exhibit 2.)

However, in an abundance of caution, Opposer provides the following analysis of the likelihood of confusion factors which clearly show that there is no genuine issue of material fact as to the likelihood of confusion between Applicant's MEDQUEST mark and Opposer's service mark MEDQUEST and their use in connection with market research services in the field of health care and pharmaceuticals. The same analysis could also be applied to Opposer's service mark MEDQUEST GLOBAL since the predominant portion of this mark, for Section 2(d) purposes, is the term MEDQUEST. Marks may be confusingly similar in appearance where there are similar terms in common. *See generally, Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd* 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and "21" CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM AND CONFIRM CELL); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §§1207.01(b)(ii) and (b)(iii).

The Board determines likelihood of confusion based on the factors set forth in *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973). *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65 (Fed. Cir. 2002). Those factors are:

- (a) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression;
- (b) The similarity or dissimilarity and nature of the goods described in an application or registration or in connection with which a prior mark is in use;

- (c) The similarity or dissimilarity of established, likely-to-continue trade channels;
- (d) The conditions under which and buyers to whom sales are made, *i.e.* “impulse” versus careful, sophisticated purchasing;
- (e) The fame of the prior mark;
- (f) The number and nature of similar marks in use on similar goods;
- (g) The nature and extent of any actual confusion;
- (h) The length of time during and the conditions under which there has been concurrent use without evidence of actual confusion;
- (i) The variety of goods on which a mark is or is not used;
- (j) The market interface between the applicant and the owner of a prior mark;
- (k) The extent to which applicant has a right to exclude others from use of its mark on its goods;
- (l) The extent of potential confusion; and
- (m) Any other established fact probative of the effect of use.

In re Majestic Distilling Co., 315 F.3d 1311, 1315 (Fed. Cir. 2003) citing *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357.

“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’” *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002) citing *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 1336 (Fed. Cir. 2001) (citing *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1406-07 (Fed. Cir. 1997)).

(a) Similarity of the Marks

The “similarity or dissimilarity of the marks in their entireties” is a predominant inquiry. *DuPont*, 476 F.2d at 1361. “This inquiry examines the relevant features of the marks, including appearance, sound, connotation, and commercial impression.” *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002) citing *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000).

Appearance

Both Opposer’s MEDQUEST mark and Applicant’s MEDQUEST mark are standard character word marks consisting solely of the term MEDQUEST, spelled identically. Applicant admits that Applicant’s MEDQUEST mark and Opposer’s MEDQUEST mark are both spelled identically and look identical. (Min Decl., ¶ 5, see Resp. to RFA Nos. 26 and 27.)

The identical spelling and appearance of Opposer’s MEDQUEST mark and Applicant’s MEDQUEST mark strongly favors a finding of likelihood of confusion.

Sound

Both Opposer’s MEDQUEST mark and Applicant’s MEDQUEST mark are standard character word marks consisting solely of the term MEDQUEST and therefore sound exactly alike. Applicant admits that Applicant’s MEDQUEST mark and Opposer’s MEDQUEST mark sound identical. (Min Decl., ¶ 5, see Resp. to RFA No. 28.)

Opposer and Applicant’s similarly sounding MEDQUEST marks favor a finding of likelihood of confusion.

Connotation or Meaning

“‘[M]eaning’ is not to be determined in the abstract, but in relation to the goods and/or services and the context in which the mark is used and encountered by consumers.” *Elvis Presley v. Capece*, 141 F.3d 188, 197 (T.T.A.B. 1990). It is proper to “compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely.” *In re August Storck KG*, 218 U.S.P.Q. 823 (T.T.A.B. 1983).

Applicant admits that Applicant’s MEDQUEST mark and Opposer’s MEDQUEST mark have the same meaning. (Min Decl., ¶ 5, see Resp. to RFA No. 29.)

Both Opposer’s MEDQUEST mark and Applicant’s MEDQUEST mark are used in connection with market research services in the field of health care and pharmaceuticals. Therefore, any meaning ascribed to the marks by the consuming public, in light of the identical services, would likely be the same meaning. Moreover, the marks would likely be encountered by consumers in the same use and manner, that is, the use and manner expected by consumers seeking market research services in the field of health care and pharmaceuticals.

Consequently, confusion as to the origin is highly likely and the similarity in connotation favors a finding of likelihood of confusion.

Commercial Impression

“The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety.” *Estate of P.D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46, 64 L. Ed. 705, 40 S. Ct. 414 (1920).

With Applicant’s MEDQUEST mark and Opposer’s MEDQUEST mark being identical

in sight, sound and connotation, the commercial impression is also identical.

The identical commercial impression garnered by Applicant's MEDQUEST mark and Opposer's MEDQUEST mark weighs in favor of a finding of likelihood of confusion.

(b) Relatedness of the Services

Another *DuPont* factor relevant to the present case is the "similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use." *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002) citing *DuPont*, 476 F.2d at 1361.

The relatedness of the services factor requires a careful comparison between the services described in an [application] and the services connected with the prior use of the mark to determine if they may be sufficiently related in the mind of the consuming public to cause confusion concerning the source or origin of the goods and services. *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164 (Fed. Cir. 2002) citing *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329 (Fed. Cir. 2000).

Opposer uses its MEDQUEST mark in connection with market research services in the field of health care and pharmaceuticals. (Krueger Decl., ¶¶ 3-8; and Second Krueger Decl., ¶ 4, Exhibits 3-10.) Opposer's market research services include conducting focus groups, interviews and surveys. (Krueger Decl., ¶ 7.)

The '551 Application recites "market research services in the field of health care and pharmaceuticals" in International Class 35 in connection with Applicant's mark. (Min Decl., ¶ 4.) Applicant admits that the description of services claimed in the '551 Application is accurate and that it uses the MEDQUEST mark in connection with the recited services. (Min Decl., ¶ 5,

see Resp. to RFA Nos. 1 and 2.) Applicant's market research services in the field of health care and pharmaceuticals include conducting focus groups, interviews and surveys. (Min Decl., ¶ 5, see Resp. to RFA Nos. 20-22.)

Applicant uses its mark in connection with the same services as Opposer provides in connection with its mark. The identical nature of the respective services favors a finding likelihood of confusion.

(c) Similarity of Channels of Trade

Opposer offers for sale, sells and promotes its services in the health care and pharmaceutical industries. (Krueger Decl., ¶¶ 3-8; and Second Krueger Decl., ¶ 4, Exhibits 3-10.) Specifically, Opposer markets its services in connection with its MEDQUEST service mark via word-of-mouth from existing clients, contact with prospective contact (via telephone, email, US mail or in person), brochures, the Internet via its website (www.medquestglobal.com), telephone, membership in industry organizations and attendance at industry meetings. (Krueger Decl., ¶ 10.) Specifically, Opposer is a member of the Pharmaceutical Business Intelligence and Research Group ("PBIRG") and attended the Annual General Meetings of the PBIRG in May 2005 and 2008. (Krueger Decl., ¶ 11.)

Applicant, likewise, admits its service are offered for sale, sold and promoted in the health care and pharmaceuticals industries. (Min Decl., ¶ 5, see Resp. to RFA Nos. 12 and 13.) Applicant also admits its marketing methods for its services include the Internet via its website (www.medquestresearch.com). (Min Decl., ¶ 5, see Resp. to RFA Nos. 23-25.) Additionally, Applicant also markets its services via personal contact with prospective clients, word of mouth from current clients, email broadcasts, mailings and membership in networking organizations.

(Min Decl., ¶ 6, see Resp. to Rog No. 5.) Applicant also markets via membership with the PBIRG and attended the Annual General Meetings of the PBIRG in May 2005. (Min Decl., ¶ 5, see Resp. to RFA No. 31.)

Both Applicant and Opposer operate in the market research channel of trade specifically in the field of health care and pharmaceuticals. (Min Decl., ¶ 5, see Resp. to RFA Nos. 12 and 13; Krueger Decl., ¶¶ 3-5; and Second Krueger Decl., ¶ 4, Exhibits 3-10.) Both Applicant and Opposer market via client contacts, word-of-mouth, Internet websites, membership in the same professional organizations and mailings. (Min Decl., ¶ 6, see Resp. to Rog No. 5; and Krueger Decl., ¶¶ 10-11.)

Accordingly, the identical channels of trade Applicant and Opposer operate in favor a finding likelihood of confusion.

(d) The Conditions Under Which And Buyers To Whom Sales Are Made, i.e., “Impulse” Versus Careful, Sophisticated Purchasing

As stated herein, Applicant and Opposer offer for sale, and sell, the same services: market research services in the field of health care and pharmaceuticals. (Min Decl., ¶ 6, see Resp. to Rog No. 2; Krueger Decl., ¶¶ 3-5; and Second Krueger Decl., ¶ 4, Exhibits 3-10.)

Applicant states that the purchasers of its services are “middle and upper level managers within U.S. and global companies that provide health-related products (for example, pharmaceutical, diagnostics and medical equipment companies).” (Min Decl., ¶ 6, see Resp. to Rog No. 3.) Moreover, Applicant states that the “purchasers of MedQuest services are typically college educated or graduate educated personnel” and that “[f]requently, but not always, the managers will request proposals of work from two or three agencies.” (Min Decl., ¶ 6, see Resp.

to Rog No. 3.)

Opposer's services are also offered for sale and/or sold to college or graduate level educated middle and upper level management of U.S. and International companies in the health care, pharmaceutical and/or market research fields. (Krueger Decl., ¶ 14.) Opposer's services are typically purchased via proposals from two or three other companies and therefore are not "impulse" purchases. (Krueger Decl., ¶ 15.)

Both Applicant and Opposer's respective services are purchased by the same class of purchasers and are not "impulse" purchases. However, even with careful purchasing by relatively sophisticated purchasers, the existing confusion (discussed herein) indicates a high degree of likelihood of confusion making this factor favors a finding likelihood of confusion.

(e) The Fame Of The Prior Mark

Opposer has used Opposer's MEDQUEST mark continuously since July 2003 with respect to its services in the health care and pharmaceutical industry. (Krueger Decl., ¶¶ 3-8; and Second Krueger Decl., ¶ 4, Exhibits 3-10.) Moreover, Opposer has invested tens and thousands of dollars marketing, promoting and providing services in connection with its trade name and Opposer's MEDQUEST mark. (Krueger Decl., ¶ 9.) As such, Opposer has achieved significant market penetration.

(f) The Number And Nature Of Similar Marks In Use On Similar Goods
[Services]

Other than Applicant, Opposer is not aware of any third party(ies) currently using the mark MEDQUEST or otherwise similar mark in use with services similar to those offered by

Opposer. (Krueger Decl., ¶ 16.) Applicant has not produced any information and/or documents regarding the number and nature of uses by others of the mark MEDQUEST or otherwise similar marks in use with similar services, if any.

(g) The Nature And Extent Of Any Actual Confusion

Since Applicant began using its mark, Applicant claims to have encountered many instances of actual confusion between Applicant and Opposer. While it is not necessary to show actual confusion in order to establish likelihood of confusion, a “showing of actual confusion would of course be highly probative, if not conclusive, of a high likelihood of confusion.” *Weiss Associates Inc. v. HRL Associates Inc.* 902 F.2d 1546, 223 USPQ 1025 (Fed. Cir. 1990); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1205 (Fed. Cir. 2003).

Applicant, in its response to Opposer’s Interrogatory No.10, described six (6) purported instances which “states, suggests, implies, or infers that there is or may be any actual, or a likelihood of, confusion, connection, association, affiliation or sponsorship between Applicant and Opposer or their respective goods and/or services...,” which is provided as follows:

Date	Type of Inquiry	Notes and Comments
6/6/2006	Respondent confusion	Physician respondent contacted MedQuest Research in search of an honorarium check that he had not received for services provided. MedQuest Research determined that it had not conducted research on the dates or the topic described by respondent. Respondent demonstrated irritation at MedQuest Research for poor delivery on its promise
7/9/2007	Sub-Contractor confusion	Applicant's Operations Manager received a voice mail message from an online vendor who had been promoting services to Applicant. Subcontractor mentioned name, Chris Lee, presumed associated with MedQuest Chicago, stating he was promoting at the PMRG convention using the MedQuest name. Sub-contractor requested clarification of relationship to MedQuest Research
2/_/2007	Sub-Contractor identifies MedQuest Global	Mark Wolff, provider of subcontracting services to companies such as Applicant's and Opposer's noted to Managing Director that Opposer was promoting the name MedQuest to PBIRG attendees; including the managers that would potentially purchase competitors' services.
5/8/2007	Partner	Steve Cohen (In4Mation Insights, formerly SHC & Associates), who is Applicant's partner in providing advanced quantitative analysis services, noted a questionnaire on the web, sponsored by Reckner, for a Hepatitis C product. Applicant's Managing Director went to the web site and determined that the questionnaire was likely sponsored by Amgen for its product. The questionnaire was embarrassingly unprofessional and inappropriately designed. The name on the survey read "MedQuest." Applicant sent a note to info@reckner.com to advise the company that Applicant, holder of the Mark, was not the sponsor of the survey and that the name should not be associated with the survey. No response was received.

Spring 2007		Applicant does not know the cause, but a formerly happy and appreciative company in California, turned decidedly cold and rejecting of Applicant's marketing calls in the Spring of 2007. In spite of highly satisfactory completion of several projects for the company, clients suddenly refused to return phone calls or hold conversations. Applicant's request for a Master Service Agreement was declined. A call to the purchasing department, that oversees the application process led Applicant to understand that there was dissatisfaction with Applicant's services, but from managers in the company that had never worked with Applicant. Applicant noted that another company was using a similar name, and inquired if there could have been confusion. The purchasing agent said he could not comment, but would make sure his managers were aware of the Applicant's statements. When pushed a bit more with more inquiries, he did not <u>deny</u> any existence of confusion, and said he would work to assure it did not happen in the future. The tone of voice and reluctance to frankly discuss the circumstance led Applicant to understand that some unfortunate confusion of companies had indeed occurred.
6/4/2007	Subcontractor confusion	Plaza Research, LA, one of Applicant's subcontractors/vendors called Applicant seeking to contact a member of another user of the Mark. They were looking for a man named Jason Turner.

(Min Decl., ¶ 6, see Resp. to Rog No. 10.)

Based on the foregoing, the purported instances of actual confusion between Applicant and Opposer which are actually known to Applicant are numerous. There is no way of knowing how often a potential consumer is actually confused. The likelihood is extremely high that a consumer of market research services in the field of health care and pharmaceuticals, looking for a company using the MEDQUEST service mark in connection with their services could easily be confused by the presence of a second company, offering the same services in connection with an identical or highly similar MEDQUEST service mark. It stands to reason that for every documented instance of actual confusion, there are likely numerous undocumented ones.

The instances of actual confusion lead to a high degree of likelihood that there will be

additional confusion in the marketplace.

(h) **The Length of Time During and the Conditions Under Which There has Been Concurrent Use Without Evidence of Actual Confusion**

Opposer began using its MEDQUEST mark in July 2003. (Krueger Decl., ¶¶ 3-4; and Second Krueger Decl., ¶ 4, Exhibits 3-10.) Applicant claims either a date of first use of February 2004 as stated in the '551 Application or December 2003 as stated in its interrogatory response. (Min Decl., ¶ 4, Exhibit 1 and ¶ 6, see Resp. to Rog No. 2.) As discussed in the analysis of the previous factor, Applicant claims to have documented instances of actual confusion since as far back as June 2006. Consequently, actual confusion resulting from the parties' concurrent use began to be identified and documented less than three years of Applicant's use of Applicant's MEDQUEST mark. Considering the identical nature of the marks, channels of trade, purchasers and services, there's no telling how many instances of actual confusion have occurred without the parties' knowledge.

(i) **The Variety Of Goods [Services] On Which A Mark Is Or Is Not Used**

Both Applicant and Opposer use the MEDQUEST mark in connection with its respective market research services in the field of health care and pharmaceuticals. The low variety of services favors a finding of likelihood of confusion.

(j) **The Market Interface Between Applicant And Owner Of A Prior Mark**

Both Applicant and Opposer operate in the market for providing market research services in the field of health care and pharmaceuticals. (Krueger Decl., ¶¶ 3-8; Second Krueger Decl., ¶

4, Exhibits 3-10; and Min Decl., ¶ 6, see Resp. to Rog No. 2.)

Any nationwide consumer of market research services in the field of health care and pharmaceuticals, looking for a company using the MEDQUEST service mark in connection with market research services, specifically focused in the field of health care and pharmaceuticals, would easily be confused by the presence of both Opposer and Applicant offering identical services in connection with the MEDQUEST service mark. The market interface is overlapping and direct and weighs in favor of a finding of likelihood of confusion.

(k) The Extent To Which Applicant Has A Right To Exclude Others From Use Of Its Mark On Its Goods

As detailed above, Opposer is the senior user. Opposer began using its trade name and the MEDQUEST service mark in connection with market research services in the field of health care and pharmaceuticals in July 2003. (Krueger Decl., ¶¶ 3-4; and Second Krueger Decl., ¶ 4, Exhibits 3-10.) In contrast, Applicant claims either a date of first use of February 2004 as stated in the '551 Application or December 2003 as stated in its interrogatory response. (Min Decl., ¶ 4, Exhibit 1 and ¶ 6, see Resp. to Rog No. 2.)

Applicant has not provided any information and/or documents that it has a right to exclude others from using its mark. However, it is clear that Opposer has the right to exclude Applicant's use of the mark MEDQUEST by way of its superior rights to the mark. It is black letter law that a senior user may enjoin a junior user from use of a confusingly similar mark. *Brookfield Communs., Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1047 (9th Cir. 1999) ("The first to use a mark is deemed the 'senior' user and has the right to enjoin 'junior' users from using confusingly similar marks in the same industry and market or within the senior

user's natural zone of expansion.”)

This factor too weighs in favor of a finding that there is a likelihood of confusion because the parties respective uses.

(I) The Extent Of Potential Confusion

Applicant admits that use of Applicant's mark and Opposer's mark for use in connection with market research services in the field of health care and pharmaceuticals is likely to cause confusion among purchasers of these services. (Min Decl., ¶ 5, Resp. to RFA No. 34.)

The extent of potential confusion is substantial and the likelihood is admitted by Applicant. (Min Decl., ¶ 5, Resp. to RFA No. 34.) Applicant has already documented several instances of actual confusion by consumers, as detailed above. With highly similar service marks, any person hearing Applicant's name may easily be confused into believing they were referring to Opposer and vice versa. Moreover, with the practice of Internet or directory searching, the presence of the same or highly similar MEDQUEST marks for market research services in the field of health care and pharmaceuticals will easily lead to consumer confusion. Since both Applicant and Opposer offer identical services, there is very little incentive for a consumer, finding Applicant when actually looking for Opposer, to continue looking or to question the identity of Applicant. Consequently, the extent of potential, and actual, confusion is great.

While not all of the *DuPont* factors may be relevant or of equal weight in a given case, and “any one of the factors may control a particular case.” *In re Dixie Restaurants*, 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997). The nearly identical similarity in the marks combined with the offering of identical services has led, and will continue to lead, to a

substantial amount of confusion and damage to the Opposer.

Likelihood of confusion has been admitted by Applicant so there is no genuine issue of material facts as to whether there is a likelihood of confusion between Applicant's MEDQUEST mark and Opposer's MEDQUEST mark. Underscoring Applicant's admission, an analysis of the *DuPont* factors clearly favors a finding likelihood of confusion.

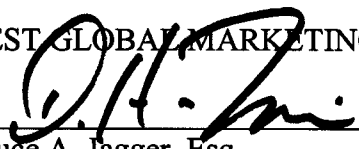
CONCLUSION

Based on the foregoing, Opposer respectfully requests Summary Judgment in its favor, sustaining the opposition and refusing registration of Applicant's MEDQUEST mark since there is no genuine issue of material fact that: (1) Opposer has priority of use of Opposer's MEDQUEST mark; and (2) registration of Applicant's MEDQUEST mark will cause confusion in the marketplace, as admitted by Applicant, and cause damage to the prior user of the mark, Opposer.

Dated: July 1, 2008

MEDQUEST GLOBAL MARKETING RESEARCH, INC

By: _____


Bruce A. Jagger, Esq.

Don H. Min, Esq.

BELASCO JACOBS & TOWNSLEY, LLP

6100 Center Drive, Suite 630

Los Angeles, California 90045

Ph. (310) 743-1188

Fax (310) 743-1189

Attorneys for Opposer

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the instant action. My business address is 6100 Center Drive, Suite 630, Los Angeles, California 90045.

On July 7, 2008, I served the following document described as **OPPOSER'S MOTION FOR SUMMARY JUDGMENT SUSTAINING THE OPPOSITION AND REFUSING REGISTRATION OF APPLICANT'S MEDQUEST MARK** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelope(s) and/or package(s) addressed as follows:

Attorneys for Applicant:

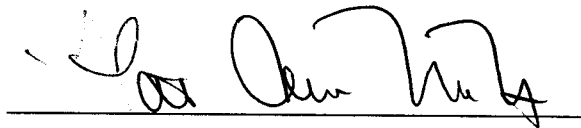
Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109-2127

- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California as first class mail.
- ☐ **BY FACSIMILE:** I served said document to be transmitted by facsimile to the addressee(s) at the listed facsimile number(s). The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.
- ☐ **BY FEDERAL EXPRESS:** I served such envelope or package to be delivered for the next day upon the addressee(s).
- ☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare that I am employed in the office of a member of the bar of this Court at whose direction such service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2008, at Los Angeles, California.



Patricia Anne McNulty

Bruce A. Jagger, Esq.
Don H. Min, Esq.
BELASCO JACOBS & TOWNSLEY, LLP
6100 Center Drive, Suite 630
Los Angeles, CA 90045
Tel. (310) 743-1188
Fax (310) 743-1189

Attorneys for Medquest Global Marketing Research, Inc.
Opposed Mark: MEDQUEST
U.S. Trademark App. Ser. No. 76/661,551

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Medquest Global Marketing Research, Inc.)	Opposition No.: 91179798
)	
Opposer,)	DECLARATION OF MIDORI
)	KRUEGER IN SUPPORT OF
v.)	OPPOSER'S MOTION FOR SUMMARY
)	JUDGMENT SUSTAINING THE
Medquest Research, LLC)	OPPOSITION AND REFUSING
)	REGISTRATION OF APPLICANT'S
Applicant.)	MEDQUEST MARK
)	

I, Midori Krueger, declare as follows:

I make this declaration of my own knowledge. I am competent to testify to the following facts and, if called upon to testify, I could and would testify thereto.

1. I make this declaration in support of Opposer's Motion For Summary Judgment Sustaining The Opposition And Refusing Registration of Applicant's MEDQUEST Mark.

2. I am the founder and President of Medquest Global Marketing Research, Inc. (“MGMR”).

3. MGMR first began using its trade name, Medquest Global Marketing Research Inc. and service marks MEDQUEST GLOBAL and MEDQUEST (collectively hereinafter “**Opposer’s MEDQUEST marks**”) in connection with market research services in the field of health care and pharmaceuticals in July 2003 when I started introducing myself as President of MGMR via electronic mail, telephone, letters and facsimile to business associates, customers and potential customers. Professionally, I also use my former name, Midori Okuma.

4. Since July 2003, MGMR has continuously utilized its trade name Medquest Global Marketing Research Inc. and Opposer’s MEDQUEST marks in connection with its market research services in the field of health care and pharmaceuticals. MGMR has used its service mark MEDQUEST GLOBAL and trade name Medquest Global Marketing Research, Inc. in connection with its services in dealings with potential clients and clients seeking market research services targeting respondents in and outside of the United States. Otherwise, MGMR has used its service mark MEDQUEST and trade name Medquest Global Marketing Research, Inc. in connection with its market research services in the field of health care and pharmaceuticals with potential clients and clients targeting its research to respondents in the United States. See, ¶ 4 and Exhibits 3 through 11 to *the Second Declaration of Midori Krueger in Support of Opposer’s Motion for Summary Judgment Sustaining the Opposition and Refusing Registration of Applicant’s Medquest Mark* concurrently submitted herewith under seal.

5. MGMR is a marketing research company focusing on market research services in the field of health care and pharmaceuticals.

6. MGMR offers field management service to its clients under its trade name Medquest Global Marketing Research Inc. and Opposer's MEDQUEST marks which include, but are not limited to, data collection services such as recruiting and interviewing consumers and physicians for market research projects.

7. MGMR's market research services in the field of health care and pharmaceuticals under its trade name Medquest Global Marketing Research Inc. and Opposer's MEDQUEST marks include conducting focus groups, interviews and surveys.

8. On or about July 2003, MGMR filed its Articles of Incorporation under the name Medquest Global Marketing Research, Inc. which was endorsed by the Secretary of State of California on August 4, 2003. An original certified copy of MGMR's Articles of Incorporation is attached hereto as **Exhibit 1**.

9. Since August 2003, MGMR has invested tens of thousands of dollars marketing, promoting and providing services in connection with its trade name Medquest Global Marketing Research, Inc. and Opposer's MEDQUEST marks.

10. MGMR markets its services in connection with Opposer's MEDQUEST marks via word-of-mouth from existing clients, contact with prospective clients by telephone, email, US mail or in person, brochures, the Internet via its website at www.medquestglobal.com, membership in industry organizations and attendance at industry meetings.

11. MGMR is a member of Pharmaceutical Business Intelligence and Research Group ("**PBIRG**") and attended the Annual General Meetings of the PBIRG in May 2005 and 2008.

12. In March 2007, I received a cease and desist letter from Applicant's counsel alleging that MGMR was "essentially providing the same services as [Applicant], using the same name and service mark" and demanding MGMR to stop using its mark stating that MGMR's "use of

the term 'MedQuest' ... is bound to cause confusion with [Applicant's] business." A true and correct copy of the letter from Applicant's counsel dated March 15, 2007 and addressed to me is attached hereto as **Exhibit 2**.

13. Since MGMR has invested significant resources into building the good will associated with its trade name Medquest Global Marketing Research, Inc. and Opposer's MEDQUEST marks and believing its business would be damaged by the registration of Applicant's proposed MEDQUEST mark and after Applicant refused MGMR's request to stop using the mark and withdraw its application, MGMR filed this Opposition on October 1, 2007.

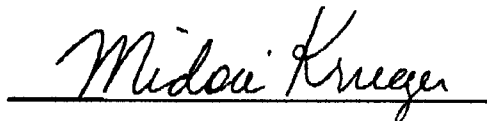
14. MGMR's services are offered for sale and/or sold to college or graduate level educated middle and upper level management of U.S. and International companies in the health care, pharmaceutical and/or market research fields.

15. MGMR's services are typically purchased via proposals from two or three other companies and therefore are not "impulse" purchases.

16. Other than Applicant, I am not aware of any third party currently using the mark MEDQUEST or another similar mark in use with services similar to those offered by MGMR.

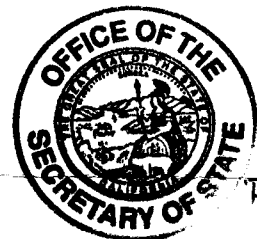
I declare under the penalty of perjury under the laws of the United States that the foregoing statements are true and correct, and that this declaration was executed on the date set forth below in Castaic, California.

This the 7 day of July, 2008.



Midori Krueger

State of California
Secretary of State



I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

MAY 01 2008

A handwritten signature in cursive script that reads "Debra Bowen".

DEBRA BOWEN
Secretary of State

ARTICLES OF INCORPORATION

OF

MedQuest Global Marketing Research, Inc.

I.

The name of this corporation is MedQuest Global Marketing Research, Inc.

II.

The purpose of this corporation is to engage in any lawful act or activity for which a Corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of this corporation's initial agent for service of process is:

Midori M. Okuma

26500 W. Agoura Rd. Suite 102-410

Calabasas, California 91302

IV.

This corporation is authorized to issue only one class of shares of stock; and the total number of shares of which this corporation is authorized to issue is: 1000.

Dated:

Midori Okuma

7/29/03

Midori M. Okuma

2521449

FILED

In the office of the Secretary of State
of the State of California

AUG 4 2003

Kevin Shelley
KEVIN SHELLEY, SECRETARY OF STATE

I hereby declare that I am the person, who executed the foregoing Articles of Incorporation,

Which execution is my act and deed.

Midori Okuma

Midori M. Okuma



**LAHIVE
&
COCKFIELD**
L L P

COUNSELLORS AT LAW
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FAX (617) 742-4214
www.lahive.com

JOHN A. LAHIVE, JR. (1928-1997)
JAMES E. COCKFIELD (1930-2000)
GIULIO A. DECONTI, JR.
ELIZABETH A. HANLEY
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ANDREW T. WILKINS, Ph.D.

* Admitted in TX only
** Admitted in CT only
*** Passed the Patent Bar

VIA FAX
VIA EXPRESS MAIL

March 15, 2007

Ms. Midori Krueger
President
MedQuest Global, Inc.
26500 W. Agoura Road, Ste. 102-410
Calabasas, CA 91302
FAX NO.: (818) 880-5179

Re: Use of "MedQuest" by
MedQuest Global, Inc.
(Our Ref: MEDS-003)

Dear Ms. Krueger:

I represent MedQuest Research, LLC, of Concord, Massachusetts, and am writing to you on its behalf. MedQuest Research, LLC has been using the trade name and service mark MEDQUEST for market research services in the fields of healthcare and pharmaceuticals since February, 2004.

MedQuest Research, LLC recently became aware of the existence of MedQuest Global, Inc. as a result of its membership in The Pharmaceutical Business Intelligence and Research Group. My client is also a member. A check of your website, www.medquestglobal.com, reveals that it is essentially providing the same services as my client, using the same name and service mark.

My client is owner of U.S. trademark application no. 76/661,551, soon to be issued as a registration for MEDQUEST. The application was temporarily delayed by an earlier filed application to register MEDQUEST by MedQuest Facilities and Recruiting, Inc., but we prevailed on that company to withdraw its application and phase out use of "MedQuest."

MEDGLOB00005

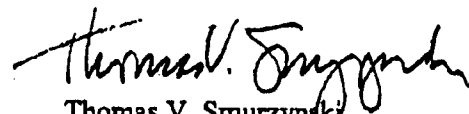
Ms. Midori Krueger
President
MedQest Global, Inc.
March 15, 2007
Page 2

Your use of the term "MedQuest" for the services you provide is bound to cause confusion with my client's business.

We must therefore demand that you take steps immediately to stop all use of the term "MedQuest" in connection with the services you provide, agree not to use it or similar terms, in the future, and to confirm this in writing.

If we do not have such confirmation by March 30, 2007, we will assume that you do not wish to acknowledge my client's trade name and service mark rights, and we shall advise it accordingly.

Very truly yours,



Thomas V. Smurzynski
FAX NO.: (617) 742-4214

TVS/pr

Cc: Dr. Susan A. Newlin

NUMBER OF PAGES INCLUDING THIS PAGE: TWO

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the instant action. My business address is 6100 Center Drive, Suite 630, Los Angeles, California 90045.

On July 7, 2008, I served the following document described as **DECLARATION OF MIDORI KRUEGER IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT SUSTAINING THE OPPOSITION AND REFUSING REGISTRATION OF APPLICANT'S MEDQUEST MARK** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelope(s) and/or package(s) addressed as follows:

Attorneys for Applicant:

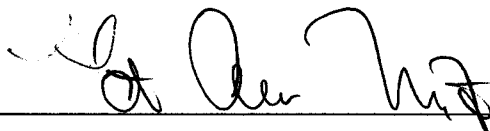
Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109-2127

- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California as first class mail.
- ☐ **BY FACSIMILE:** I served said document to be transmitted by facsimile to the addressee(s) at the listed facsimile number(s). The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.
- ☐ **BY FEDERAL EXPRESS:** I served such envelope or package to be delivered for the next day upon the addressee(s).
- ☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare that I am employed in the office of a member of the bar of this Court at whose direction such service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2008, at Los Angeles, California.



Patricia Anne McNulty

Bruce A. Jagger, Esq.
Don H. Min, Esq.
BELASCO JACOBS & TOWNSLEY, LLP
6100 Center Drive, Suite 630
Los Angeles, CA 90045
Tel. (310) 743-1188
Fax (310) 743-1189

Attorneys for Medquest Global Marketing Research, Inc.
Opposed Mark: MEDQUEST
U.S. Trademark App. Ser. No. 76/661,551

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Medquest Global Marketing Research, Inc.)	Opposition No.: 91179798
)	
Opposer,)	SECOND DECLARATION OF MIDORI
)	KRUEGER IN SUPPORT OF
v.)	OPPOSER'S MOTION FOR SUMMARY
)	JUDGMENT SUSTAINING THE
Medquest Research, LLC)	OPPOSITION AND REFUSING
)	REGISTRATION OF APPLICANT'S
Applicant.)	MEDQUEST MARK
)	
)	REDACTED PURSUANT TO 37 C.F.R. §
)	2.126(c)
)	

I, Midori Krueger, declare as follows:

I make this declaration of my own knowledge. I am competent to testify to the following facts and, if called upon to testify, I could and would testify thereto.

1. I make this declaration in support of Opposer's Motion For Summary Judgment Sustaining The Opposition And Refusing Registration of Applicant's MEDQUEST Mark.

2. I am the founder and President of Medquest Global Marketing Research, Inc. ("MGMR").

3. MGMR first began using its trade name, Medquest Global Marketing Research, Inc., and service marks MEDQUEST GLOBAL and MEDQUEST (collectively hereinafter "Opposer's MEDQUEST marks") in connection with market research services in the field of health care and pharmaceuticals in July 2003 when I started introducing myself as President of MGMR via electronic mail, telephone, letters and facsimile to business associates, customers and potential customers. Professionally, I also use my former name, Midori Okuma. MGMR has used its service mark MEDQUEST GLOBAL and trade name Medquest Global Marketing Research, Inc. in connection with its services in dealings with potential clients and clients seeking market research services targeting respondents in and outside of the United States. Otherwise, MGMR has used its service mark MEDQUEST and trade name Medquest Global Marketing Research, Inc. in connection with its market research services in the field of health care and pharmaceuticals with potential clients and clients targeting its research to respondents in the United States.

4. The following records attached hereto as Exhibits 3 through 10 were made or received in the regular course of MGMR's business activities on or about the time of the transactions reflected therein and it was MGMR's regular course of business to make, receive and maintain the following records. I am the custodian of the following records:

- a. Attached hereto as **Exhibit 3**, Bates Nos. MEDGLOB00027-MEDGLOB00029 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and

correct copy of a letter dated August 27, 2003 sent by MGMR over my name to a potential client introducing MGMR's services. I have personal knowledge of the facts stated in Exhibit 3 and such facts are true.

- b. Attached hereto as **Exhibit 4**, Bates Nos. MEDGLOB00043 – MEDGLOB00044 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and correct copy of MGMR's Invoice No. [REDACTED] dated October 31, 2003 sent to [REDACTED] for market research services in the field of healthcare and pharmaceuticals rendered by MGMR for [REDACTED], including conducting interviews and surveys. Also attached are records of [REDACTED] payment for MGMR's services.
- c. Attached hereto as **Exhibit 5**, Bates Nos. MEDGLOB00045 – MEDGLOB00046 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and correct copy of MGMR's Invoice No. [REDACTED] dated July 12, 2003 sent to [REDACTED] for market research services in the field of healthcare and pharmaceuticals rendered by MGMR for [REDACTED], including conducting interviews and surveys regarding [REDACTED] in Atlanta, Boston, Baltimore, Birmingham, Chicago, Denver, Detroit, Ft. Lauderdale, Los Angeles, Milwaukee, New Jersey, New Orleans, Philadelphia, Pittsburgh, San Francisco, St. Louis and Tampa. Also attached are records of [REDACTED] payment for MGMR's services.
- d. Attached hereto as **Exhibit 6**, Bates Nos. MEDGLOB00047 – MEDGLOB00048 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and correct copy of MGMR's Invoice No. [REDACTED] dated July 14, 2003 sent to

██████████ for market research services in the field of healthcare and pharmaceuticals rendered by MGMR for ██████████, including conducting interviews and surveys regarding ██████████ in Atlanta, Baltimore, Birmingham, Chicago, Cleveland, Detroit, Ft. Lauderdale, Houston, Kansas City, Los Angeles, Milwaukee, Minneapolis, New Orleans, North Carolina, Philadelphia, Phoenix, Pittsburgh, Sacramento, San Francisco, Saint Louis and West Palm. Also attached are records of ██████████ ██████████ payment for MGMR's services.

- e. Attached hereto as **Exhibit 7**, Bates Nos. MEDGLOB00049-MEDGLOB00051 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and correct copy of MGMR's Invoice No. ██████████ dated September 9, 2003 and Invoice No. ██████████ dated September 9, 2003 sent to ██████████ for market research services in the field of healthcare and pharmaceuticals rendered by MGMR for ██████████ in Philadelphia, Ft. Lauderdale, Denver and Los Angeles. Also attached are records of ██████████ payment for MGMR's services.
- f. Attached hereto as **Exhibit 8**, Bates Nos. MEDGLOB00056 – MEDGLOB00057 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and correct copy of MGMR's Invoice No. ██████████ dated October 31, 2003 sent to ██████████ for market research services in the field of healthcare and pharmaceuticals rendered by MGMR for ██████████, including conducting interviews and surveys regarding ██████████ in Boston, Atlanta, Baltimore, Birmingham, Chicago, Denver, Detroit, Ft. Lauderdale, Los Angeles,

01/01/2008 12:00 FAX 004/004

Milwaukee, New Jersey, New Orleans, Philadelphia, Phoenix, Pittsburgh, San Francisco, St. Louis and Tampa. Also attached are records of [REDACTED] payment for MGMR's services.

- g. Attached hereto as **Exhibit 9**, Bates Nos. MEDGLOB00054 – MEDGLOB00055 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and correct copy of MGMR's Invoice No. [REDACTED] dated November 3, 2003 sent to [REDACTED] for market research services in the field of healthcare and pharmaceuticals rendered by MGMR for [REDACTED], including conducting interviews and surveys in Atlanta, Baltimore, Chicago, Cleveland, Detroit, Ft. Lauderdale, Kansas City, Los Angeles, Milwaukee, Minneapolis New Orleans, North Carolina, Philadelphia, Phoenix, Pittsburgh and San Francisco. Also attached are records of [REDACTED] payment for MGMR's services.
- h. Attached hereto as **Exhibit 10**, Bates No. MEDGLOB00062 and stamped "CONFIDENTIAL – ATTORNEY'S EYES ONLY" is a true and correct copy of an invoice dated September 4, 2003 for design services sought by MGMR with respect to its mark and stationary.

I declare under the penalty of perjury under the laws of the United States that the foregoing statements are true and correct, and that this declaration was executed on the date set forth below in Castaic, California.

This the 7 day of July, 2008.



Midori Krueger

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PROOF OF SERVICE

I am over the age of eighteen years and not a party to the instant action. My business address is 6100 Center Drive, Suite 630, Los Angeles, California 90045.

On July 7, 2008, I served the following document described as **SECOND DECLARATION OF MIDORI KRUEGER IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT SUSTAINING THE OPPOSITION AND REFUSING REGISTRATION OF APPLICANT'S MEDQUEST MARK [REDACTED]** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelope(s) and/or package(s) addressed as follows:

Attorneys for Applicant:

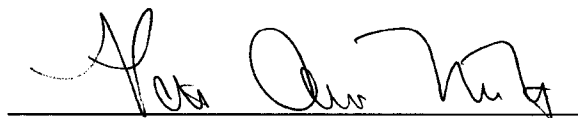
Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109-2127

- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
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- ☐ **BY FACSIMILE:** I served said document to be transmitted by facsimile to the addressee(s) at the listed facsimile number(s). The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.
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- ☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare that I am employed in the office of a member of the bar of this Court at whose direction such service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2008, at Los Angeles, California.



Patricia Anne McNulty

Bruce A. Jagger, Esq.
Don H. Min, Esq.
BELASCO JACOBS & TOWNSLEY, LLP
6100 Center Drive, Suite 630
Los Angeles, CA 90045
Tel. (310) 743-1188
Fax (310) 743-1189

Attorneys for Medquest Global Marketing Research, Inc
Opposed Mark: MEDQUEST
U.S. Trademark App. Ser. No. 76/661,551

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Medquest Global Marketing Research, Inc.)	Opposition No.: 91179798
)	
Opposer,)	DECLARATION OF DON H. MIN IN
)	SUPPORT OF OPPOSER'S MOTION
v.)	FOR SUMMARY JUDGMENT
)	SUSTAINING THE OPPOSITION AND
Medquest Research, LLC)	REFUSING REGISTRATION OF
)	APPLICANT'S MEDQUEST MARK
Applicant.)	
)	

I, Don H. Min, declare as follows:

I make this declaration of my own knowledge. I am competent to testify to the following facts and, if called upon to testify, I could and would testify thereto.

1. I make this declaration in support of Opposer's Motion For Summary Judgment Sustaining The Opposition And Refusing Registration of Applicant's MEDQUEST Mark.

2. I am licensed to practice law in California and registered with the United States Patent and Trademark Office.

3. I am one of the attorneys representing Opposer Medquest Global Marketing Research, Inc. (“MGMR”) in Opposition No. 91179798, entitled *Medquest Global Marketing Research, Inc. v. Medquest Research, LLC*. (hereinafter “**the Opposition**”.)

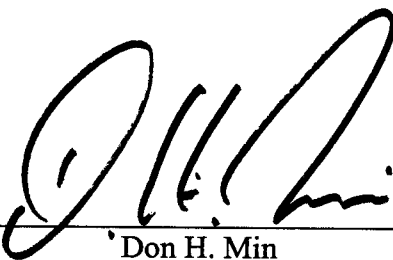
4. Attached hereto as **Exhibit 1** is a true and correct copy of a TESS print out for Applicant’s service mark application No. 76/661,551 (hereinafter “**the ‘551 Application**”) which claims *inter alia* a date of first use and in commerce of February 2004 for “market research services in the field of health care and pharmaceuticals.”

5. Attached hereto as **Exhibit 2** are true and correct copies of the relevant excerpts of Applicant’s responses to MGMR’s Request for Admissions to Applicant, Set One, specifically, RFA Nos. 1-5; 12-13; 20-29; 31 and 34 .

6. Attached hereto as **Exhibit 3** are true and correct copies of the relevant excerpts of Applicant’s verified responses to MGMR’s Interrogatories to Applicant, Set One, specifically, Interrogatory Nos. 2-3; 5; 7 and 10.

I declare under the penalty of perjury under the laws of the United States that the foregoing statements are true and correct, and that this declaration was executed on the date set forth below in Los Angeles, California.

This the 1st day of July, 2008.



Don H. Min



United States Patent and Trademark Office

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MEDQUEST

Word Mark MEDQUEST
Goods and Services IC 035. US 100 101 102. G & S: market research services in the field of health care and pharmaceuticals. FIRST USE: 20040200. FIRST USE IN COMMERCE: 20040200
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 76661551
Filing Date June 8, 2006
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition June 5, 2007
Owner (APPLICANT) Medquest Research, LLC LTD LIAB CO MASSACHUSETTS 35 Forest Ridge Concord MASSACHUSETTS 01742
Attorney of Record Thomas V. Smurzynski
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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MEDQUEST GLOBAL MARKETING
RESEARCH, INC.

V.

Attorney Dkt. No.: MEDS-003

-1-

Response

Deny.

Request No. 4

Admit that the date of first use in commerce claimed in the '551 Application is correct.

Response

Deny.

Request No. 5

Admit that YOU were organized in the commonwealth of Massachusetts on February 3, 2004.

Response

Admit.

Request No. 6

Admit that YOU first used the OPPOSED MARK after January 1, 2004.

Response

Deny.

Request No. 7

Admit that YOU first used the OPPOSED MARK in commerce after January 1, 2004.

Response

Deny.

Request No. 8

Admit that YOU first used the OPPOSED MARK in connection with market research services in the field of health care and pharmaceuticals after January 1, 2004.

Response

Deny.

Request No. 9

Admit that YOU knew of the existence of OPPOSER prior to February 1, 2004.

Response

Deny.

Request No. 10

Admit that YOU knew of OPPOSER'S MARK prior to February 1, 2004.

Response

Deny.

Request No. 11

Admit that YOU knew OPPOSER'S MARK was used in connection with market research services in the field of health care and pharmaceuticals prior to February 1, 2004.

Response

Deny.

Request No. 12

Admit that YOUR services are offered for sale, sold, and promoted in the health care industry.

Response

Admit.

Request No. 13

Admit that YOUR services are offered for sale, sold, and promoted in the pharmaceuticals industry.

Response

Admit.

Request No. 14

Admit that "medquest" is the dominant pat of YOUR trade name.

Response

Admit.

Request No. 15

Admit that "medquest" is the dominant part of OPPOSER'S trade name.

Response

Admit.

Request No. 16

Admit that YOU offer market research services with respect to health care.

Response

Admit.

Request No. 17

Admit that OPPOSER offers market research services with respect to pharmaceuticals.

Response

Applicant has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable Applicant to admit or deny.

Request No. 18

Admit that YOU and OPPOSER are competitors with respect to market research services in the field of health care and pharmaceuticals.

Response

Applicant has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable Applicant to admit or deny.

Request No. 19

Admit that YOU and OPPOSER both conducted market research service activities on the same day, May 9, 2007, at the National Qualitative Centers in Chicago, Illinois.

Response

Deny.

Request No. 20

Admit that YOUR market research services offered under the OPPOSED MARK include conducting focus groups.

Response

Admit.

Request No. 21

Admit that YOUR market research services offered under the OPPOSED MARK include conducting interviews.

Response

Admit.

Request No. 22

Admit that YOUR market research services offered under the OPPOSED MARK include conducting surveys.

Response

Admit.

Request No. 23

Admit that the marketing methods used by YOU for YOUR marketing services include a website.

Response

Admit.

Request No. 24

Admit that YOU promote YOUR market research services under the OPPOSED MARK on the web site <http://www.medquestresearch.com>.

Response

Admit.

Request No. 25

Admit that the marketing methods used by YOU for your marketing services include the Internet.

Response

Admit.

Request No. 26

Admit that APPLICANT'S MARK and OPPOSER'S MARK are spelled identically.

Response

Admit.

Request No. 27

Admit that APPLICANT'S MARK and OPPOSER'S MARK look identical.

Response

Admit.

Request No. 28

Admit that APPLICANT'S MARK and OPPOSER'S MARK sound identical.

Response

Admit.

Request No. 29

Admit that APPLICANT'S MARK and OPPOSER'S MARK have the same meaning.

Response

Admit.

Request No. 30

Admit that YOU are a member of the Pharmaceutical Business Intelligence and Research Group ("PBIRG").

Response

Admit.

Request No. 31

Admit that YOU attended the Annual General Meeting of Pharmaceutical Business Intelligence and Research Group ("PBIRG") in May 2005.

Response

Admit.

Request No. 32

Admit that YOU attended the Annual General Meeting of Pharmaceutical Business Intelligence and Research Group ("PBIRG") in May 2006.

Response

Admit.

Request No. 33

Admit that YOU attended the Annual General Meeting of Pharmaceutical Business Intelligence and Research Group ("PBIRG") in May 2007.

Response

Deny.

Request No. 34

Admit that use of APPLICANT'S MARK and OPPOSER'S MARK for use in the connection with market research services in the field of health care and pharmaceuticals is likely to cause confusion among purchasers of these services.

Response

Admit.

Request No. 35

Admit that use of APPLICANT'S MARK and OPPOSER'S MARK for use in the connection with market research services in the field of health care and pharmaceuticals has caused at least one instance of actual confusion among purchasers of these services.

Response

Applicant has made reasonable inquiry and the information known or readily obtainable by it is insufficient to enable Applicant to admit or deny.

Request No. 36

Admit that YOU believe use of the term "MedQuest" for the services provided by APPLICANT is "bound to cause confusion" with YOUR services as stated in the March 27, 2007 letter to Ms. Midori Krueger from Mr. Thomas V. Smurzynski.

Response

Applicant objects to this request as incomprehensible in that it seems to ask if Applicant's mark on its services was bound to cause confusion with its own services.

MEDQUEST RESEARCH, LLC

Date: DEC. 31, 2007

By: Thomas V. Smurzynski
Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109
Phone (617) 227-7400
Fax (617) 742-4214
Attorneys for Applicant
MEDQUEST RESEARCH, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS (Nos. 1-36) was served by first-class mail, postage prepaid, on counsel for Opposer, Bruce A. Jagger, Esq. Belasco Jacobs & Townsley, LLP, 6100 Center Drive, Los Angeles, CA 90045, on this 31st day of December, 2007.

Thomas V. Smurzynski
Thomas V. Smurzynski

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MEDQUEST GLOBAL MARKETING
RESEARCH, INC.

Opposer,

v.

MEDQUEST RESEARCH, LLC,
Applicant.

Opposition No. 91/179,798

Attorney Dkt. No.: MEDS-003

**APPLICANT'S RESPONSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

PRELIMINARY STATEMENT

1. Applicant herein responds to Opposer's First Set of Interrogatories.
2. Applicant is not responding on behalf of any other entity or individual other than itself.
3. Applicant, based upon its current knowledge, understanding and belief of the facts and information available to it as of the date on which this response is made, responds and objects as set forth below to the Interrogatories. This response, while based on diligent exploration by Applicant and its counsel, reflects only the current state of Applicant's knowledge, understanding and belief respecting the matters about which inquiry was made. Further, Applicant has not completed its investigation of the facts relating to this action, and anticipates that as this proceeding proceeds further facts may be discovered by it, and, without in any way obligating itself to do so, Applicant reserves the right to modify or supplement its response with such pertinent information as it may subsequently discover.

INTERROGATORY NO. 2:

Describe in detail each good and/or service that Applicant has offered for sale, sold, advertised, promoted or intends to expand into offering for sale, selling, advertising, or promoting under the Opposed Mark, the manner in which the mark is or will be used in connection therewith, and the date ranges during which the mark was used (including the date of first use).

RESPONSE TO INTERROGATORY NO. 2:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information. Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

Applicant has offered business and market consulting, and information gathering through various techniques (primary market research modalities such as surveys, focus groups, interviews; secondary data collection, including review of printed and electronic material using library and Internet searches; analysis of data using various market and statistical analytic tools, modeling of future market and business scenarios). The data and analysis are put into client reports and delivered via various formats, primarily written, verbal, and electronic.

The mark is used as a name of the company and as a brand for its services.

The mark is also used verbally by MedQuest employees and by our clients when discussing MedQuest and its services.

The mark has been in continuous use since its inception in December, 2003. It is associated with all instruments used to collect or convey information; appearing, for example, within surveys, on all promotional materials relating to gaining business, and on all reports and communications delivered to clients. The mark appears on Applicant's stationery, electronic documents, employment applications, business cards, presentations, proposals, project documents, reports, invoices, checks, and other documents.

INTERROGATORY NO. 3:

Describe in detail the purchasers of Applicant's goods and/or services, including but not limited to the purchaser's level of sophistication, impulsivity of purchasing, quote and price comparison practices, and uses for Applicant's goods and/or services.

RESPONSE TO INTERROGATORY NO. 3:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information. Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

The purchasers of Applicant's services are middle and upper level managers within U.S. and global companies that provide health-related products (for example, pharmaceutical, diagnostics and medical equipment companies). Purchasers also include other service providers, such as U.S. and ex-U.S. research and consulting agencies that wish to gain access to Applicant's expertise and channels of communication.

The purchasers of MedQuest services are typically college educated or graduate educated personnel. Frequently, but not always, the managers will request proposals of work from two to three agencies. Contracts are awarded based on a combination of perceived expertise in the markets and types of services to be specifically applied, basic understanding of the client's business question and perceived ability of Applicant to successfully answer that question, the approach or approaches described by Applicant in the proposal process, general good will toward the Applicant, and pricing. Applicant's middle management clients will ultimately manage and oversee the process of Applicant's work and deliverables. These clients typically have budgetary authority to purchase services up to \$100,000. Projects that will cost a higher amount require Director or Vice President level sign-off. The results and recommendations Applicant delivers to clients are used by executives within the product companies to make decisions relative to product development, marketing, and promotional strategies and tactics.

INTERROGATORY NO. 4:

Describe in detail the channels of trade in which Applicant's goods and/or services are, or will be, offered for sale, sold, advertised and/or promoted.

RESPONSE TO INTERROGATORY NO. 4:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information. Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

Applicant's final deliverables to clients are delivered verbally and in person, in printed format, via electronic reports and media transmitted by e-mail or electronic recording, and/or via a secured project-related web site.

INTERROGATORY NO. 5:

Identify with specificity the marketing methods used or intended to be used by or for Applicant in the advertising and/or sale of goods and/or services under the Opposed Mark (including, without limitation, signs, labels, tags, wrappers, containers, packages, advertisements, Websites/domains, affiliate programs, use of Applicant's electronic content as advertising, email communications or blast to customers and/or affiliates, television advertisements, radio advertisements, brochures, newspapers, magazines, trade journals or periodicals, promotional materials and/or point-of-sale displays) and the dates each marketing method was ever used, and identify the persons with knowledge of marketing methods used or intended to be used by or for Applicant in the advertising and/or sale of goods or services under the Opposed Mark.

RESPONSE TO INTERROGATORY NO. 5:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information. Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

Marketing for Applicant's services includes but is not limited to the following channels and activities:

INTERROGATORY NO. 7:

Describe in detail the circumstances by which Applicant selected each of the Opposed Mark, including but not limited to all marks considered before selecting each of the Opposed Mark; each person's participation in Applicant's selection, design and/or adoption of each of the Opposed Mark; and all relevant dates upon which each act occurred.

RESPONSE TO INTERROGATORY NO. 7:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information. Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

MedQuest Research founder and Managing Director engaged a to-be employee, Diane Glynn to work with her to develop the Mark. Brainstorming sessions produced several ideas, including but not limited to: Medquest, MedQuest, MedPlus, MedQuery, MedProbe, Medica. Reviews with colleagues and clients determined a final choice. These reviewers included but were not limited to: Ricky Kurzman, Jon Sloss, Gary Wallens of Pfizer Pharmaceuticals, Graem Crystal of Zaicom, Karl Loos Consulting, Jane Graham Consulting, and Cheryl Davis of Courtland Financial Group. The brainstorming and reviews began in November 2003.

INTERROGATORY NO. 8:

Identify with specificity the accounting methods used by, or on behalf of, Applicant to identify and quantify the sales revenues realized by Applicant in connection with its

advertising, marketing, and/or sale of goods and/or services from the date of first use until present, including but not limited to dollar volume of sales from goods sold and/or services rendered, expenses, gross profit, net profit, and the manner in which sales can be traced and/or categorized by customer, good, service, advertisement, referral, source, and date.

RESPONSE TO INTERROGATORY NO. 8:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information. Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

MedQuest Research uses QuickBooks Accounting, which was transferred to the Contractor's edition late in 2004. It identifies all revenue and expenses as it relates to projects delivered.

INTERROGATORY NO. 9:

Describe in detail all customer service inquiries, complaints, returns and/or exchanges made by Applicant's customers in connection with any goods shipped, distributed, or sold and/or services requested or rendered by Applicant.

RESPONSE TO INTERROGATORY NO. 9:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information.

Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

There are no complaints or returns to be noted. All reports were received in good form, and all invoices paid in a reasonable time.

INTERROGATORY NO. 10:

Describe each and every instance, communication, oral or written, that Applicant or any person acting for or on Applicant's behalf has received or been made aware of from any members of the public or trade which states, suggests, implies, or infers that there is or may be any actual, or a likelihood of, confusion, connection, association, affiliation or sponsorship between Applicant and Opposer or their respective goods and/or services or their respective websites/domains, identifying all evidence of each such communication and identifying each and every person with knowledge of such facts.

RESPONSE TO INTERROGATORY NO. 10:

Applicant objects to this interrogatory on the grounds that it is over broad and unduly burdensome. Applicant further objects to this interrogatory to the extent that it seeks confidential and proprietary trade secret information. Applicant still further objects to this interrogatory to the extent that it seeks information that is not relevant to the claims or defenses of the parties hereto, and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing General Objections and the specific objections, Applicant responds as follows:

Date	Type of Inquiry	Notes and Comments
6/6/2006	Respondent confusion	Physician respondent contacted MedQuest Research in search of an honorarium check that he had not received for services provided. MedQuest Research determined that it had not conducted research on the dates or the topic described by respondent. Respondent demonstrated irritation at MedQuest Research for poor delivery on its promise
7/9/2007	Sub-Contractor confusion	Applicant's Operations Manager received a voice mail message from an online vendor who had been promoting services to Applicant. Subcontractor mentioned name, Chris Lee, presumed associated with MedQuest Chicago, stating he was promoting at the PMRG convention using the MedQuest name. Sub-contractor requested clarification of relationship to MedQuest Research
2/_/2007	Sub-Contractor identifies MedQuest Global	Mark Wolff, provider of subcontracting services to companies such as Applicant's and Opposer's noted to Managing Director that Opposer was promoting the name MedQuest to PBIRG attendees; including the managers that would potentially purchase competitors' services.
5/8/2007	Partner	Steve Cohen (In4Mation Insights, formerly SHC & Associates), who is Applicant's partner in providing advanced quantitative analysis services, noted a questionnaire on the web, sponsored by Reckner, for a Hepatitis C product. Applicant's Managing Director went to the web site and determined that the questionnaire was likely sponsored by Amgen for its product. The questionnaire was embarrassingly unprofessional and inappropriately designed. The name on the survey read "MedQuest." Applicant sent a note to Info@reckner.com to advise the company that Applicant, holder of the Mark, was not the sponsor of the survey and that the name should not be associated with the survey. No response was received.

Spring 2007		Applicant does not know the cause, but a formerly happy and appreciative company in California, turned decidedly cold and rejecting of Applicant's marketing calls in the Spring of 2007. In spite of highly satisfactory completion of several projects for the company, clients suddenly refused to return phone calls or hold conversations. Applicant's request for a Master Service Agreement was declined. A call to the purchasing department, that oversees the application process led Applicant to understand that there was dissatisfaction with Applicant's services, but from managers in the company that had never worked with Applicant. Applicant noted that another company was using a similar name, and inquired if there could have been confusion. The purchasing agent said he could not comment, but would make sure his managers were aware of the Applicant's statements. When pushed a bit more with more inquiries, he did not <u>deny</u> any existence of confusion, and said he would work to assure it did not happen in the future. The tone of voice and reluctance to frankly discuss the circumstance led Applicant to understand that some unfortunate confusion of companies had indeed occurred.
6/4/2007	Subcontractor confusion	Plaza Research, LA, one of Applicant's subcontractors/vendors called Applicant seeking to contact a member of another user of the Mark. They were looking for a man named Jason Turner.

INTERROGATORY NO. 11:

If Applicant, or any person acting for or on its behalf, performed or had performed any study or analysis comparing any of Opposer's goods and/or services to any of Applicants' goods and/or services, separately for each such study or analysis, identify the person who performed the study or analysis and state in detail the conclusions made and the bases therefor.

RESPONSE TO INTERROGATORY NO. 13:

Dr. Susan Newlin, founder, Managing Director, and principal stockholder of MedQuest Research LLC.

INTERROGATORY NO. 14:

Identify the individual who can testify regarding the opinion that Opposer's "use of the term 'MedQuest' for the services [it] provide[s] is bound to cause confusion" with Applicant's business as stated in the letter from Applicant's attorney to Opposer on March 15, 2007.

RESPONSE TO INTERROGATORY NO. 14:

Dr. Susan Newlin, founder, Managing Director, and principal stockholder of MedQuest Research LLC.

INTERROGATORY NO. 15:

Identify each person who supplied information used in preparing the answer to these interrogatories.

RESPONSE TO INTERROGATORY NO. 15:

Dr. Susan Newlin, founder, Managing Director, and principal stockholder of MedQuest Research LLC.

MEDQUEST RESEARCH, LLC

Date: JAN. 14, 2008

By: Thomas V. Smurzynski

Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109
Phone (617) 227-7400
Fax (617) 742-4214
Attorneys for Applicant
MEDQUEST RESEARCH, LLC

VERIFICATION OF INTERROGATORY RESPONSES

I am Managing Director of MedQuest Research, LLC, and am authorized to make this verification for and on its behalf, and I make this verification for and on its behalf. Based on my knowledge, I believe that the responses set forth in the foregoing document are true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on:

JAN. 13, 2008

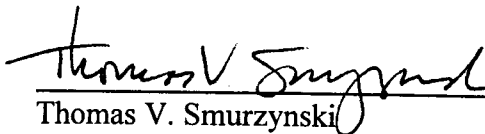
By:



Susan Newlin

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES was served by first-class mail, postage prepaid on counsel for Opposer, Bruce A. Jagger, Esq., Belasco Jacobs & Townsley, LLP, 6100 Center Drive, Los Angeles, CA 90045, on this 14th day of January, 2008.



Thomas V. Smurzynski

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the instant action. My business address is 6100 Center Drive, Suite 630, Los Angeles, California 90045.

On July 7, 2008, I served the following document described as **DECLARATION OF DON H. MIN IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT SUSTAINING THE OPPOSITION AND REFUSING REGISTRATION OF APPLICANT'S MEDQUEST MARK** on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelope(s) and/or package(s) addressed as follows:

Attorneys for Applicant:

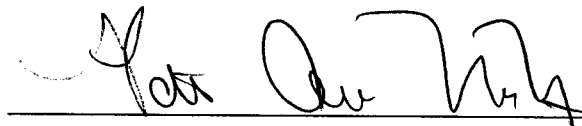
Thomas V. Smurzynski
LAHIVE & COCKFIELD LLP
One Post Office Square
Boston, MA 02109-2127

- ☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California as first class mail.
- ☐ **BY FACSIMILE:** I served said document to be transmitted by facsimile to the addressee(s) at the listed facsimile number(s). The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.
- ☐ **BY FEDERAL EXPRESS:** I served such envelope or package to be delivered for the next day upon the addressee(s).
- ☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).

I declare that I am employed in the office of a member of the bar of this Court at whose direction such service was made.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 7, 2008, at Los Angeles, California.



Patricia Anne McNulty